

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

MEMORANDUM

TO: John Robertus

FROM: Paul J. Richter, WRCE
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: November 6, 2002

SUBJECT: U.S. NAVY, NAVAL BASE SAN DIEGO (NBSD)
RESPONSE TO COMMENTS REGARDING TENTATIVE ORDER NO.
R9-2002-0169
ITEM NO. 13

The Regional Board received comment letters from **A.** the U.S. Navy; **B.** the Environmental Health Coalition; and **C.** Briggs Law Corporation for its client the Divers' Environmental Conservation Organization (DECO). The identification of the comments in this memorandum attempted to follow the numbering regime in each of the comment letters. Brief paraphrases of the concerns listed in each letter and staff's response are provided below. Some of the concerns have been grouped into one comment. The original letters should be reviewed to be sure the reader understands the comment and to ensure that I have accurately summarized the comment.

A. The U.S. Navy letter dated October 29, 2002.

General Comment

Industrial Storm Water Monitoring: The industrial storm water monitoring requirements begin 10 days after adoption of the tentative Order. The Navy will need to renegotiate the contracts for the storm water monitoring program. The 2002/2003 storm water monitoring contract was implemented on May 9, 2002. The Navy requests that the monitoring requirements begin after the wet weather season for 2002/2003.

Response: A change to the monitoring and reporting requirements is not recommended. The tentative Order for the NBSD includes some additional monitoring requirements such as toxicity monitoring, additional chemical monitoring, and visual observation requirements. Monitoring for the 2002/2003 wet weather season will allow an additional year of data to be collected. The monitoring is necessary to evaluate the discharge.

Tentative Order Comments

Comment 1: Page 3, Item 11: The definition of *high-risk area* is different than the definition in the shipyard permits.

Response: The definition and references to the *high-risk area* does not include the qualifying prepositional phrase *from ship repair, modification and maintenance activities* because the tentative Order includes industrial facilities other than ship repair, modification and maintenance activities.

Comment 2: Page 5, Item 28: Please further explain what public meeting is being discussed here?

Response: The *public meeting* identified is the Regional Board's public meeting for considering the adoption of the tentative Order. The Regional Board is scheduled to consider adoption of the tentative Order at its November 13, 2002 meeting.

Comment 3: Page 7, Discharge Specification, item 2: The Multi-Sector permit and the Monitoring Program list copper concentrations at 63.6 µg/L rather than 63 µg/L. The citation should be changed to 63.6 µg/L.

Response: The tentative Order, Monitoring and Reporting Program, and the Fact Sheet will be changed at respective citations for copper from 63 µg/L to 63.6 µg/L.

Comment 4: Page 7, Discharge Specification, item 2: This item states that a copper value of 63 µg/L and zinc values of 117 µg/L apply to industrial storm water monitoring for any industrial activity. Monitoring and Reporting Program section C.2. 1st paragraph, states that these values only apply to NAVSTA. Please make copper limits consistent and clarify if this requirement applies to all industrial storm water monitoring or only storm water monitoring at NAVSTA.

Response: Monitoring and Reporting Program Section C.2., page M-6, requires the NAVSTA facility to analyze the industrial storm water concentrations for copper and zinc. The other industrial storm water discharge locations or facilities *may* monitor for copper and zinc but are not required to monitor for copper and zinc unless the chemicals are identified pursuant *Sampling and Analysis 7.c*, page M-9. If a storm water discharge analyses from any discharge location (i.e. NAVSTA, Broadway Complex, or NMCSO) has concentrations of copper greater than 63.6 ug/L or zinc greater than 117 ug/L then the discharge must be resampled and analyzed according to *Discharge Specification B.2*.

Comment 5: Page 7, Discharge Specification, item 4.b: *Discharge Specification B.4.b.* requires the Navy to conduct a toxicity study of the industrial storm water discharges from the NAVSTA facility. The *Specification* appears to conflict with the Monitoring and Reporting Program,

Industrial Storm Water Monitoring, Monitoring for Toxicity at NAVSTA, Interim toxicity monitoring study, page M-7, which requires a minimum of three locations for the toxicity study or as determined by an alternative monitoring plan. The Navy requests the specification be changed to match the Monitoring and Reporting

Response: The *Discharge Specification B.4.* (p. 7, tentative Order) does not need to be changed. The toxicity study should characterize all of the NAVSTA discharges. The study should consider the toxicity from all areas of the NAVSTA facility. The monitoring requirements (p. M-7, Monitoring and Reporting Program) require that a minimum of three locations be sampled during the interim period or, as an option, collect samples according to the toxicity study plan.

Comment 6: Page 7.B.3: The specification to terminate the runoff from high-risk areas within 2-years appears to conflict with the Monitoring and Reporting requirement of 27 months to report the termination of the runoff from the high-risk areas.

Response: The specification requires the discharger to terminate the runoff within 2-years (24-months). The monitoring requirement allows the Navy 3-months after the termination to report to the Regional Board compliance with the 2-year compliance specification.

Comment 7: Attachment B, page 6: The salt water discharge at the Mole Pier has been shut down.

Response: Comment noted.

Comment 8: Attachment D, Page 3, Section 4.a: The requirement for the maps to show the boundaries of high-risk areas appear to conflict with the section 4.f which requires high-risk areas at NAVSTA. Revise 4.a so that only the high-risk areas at NAVSTA need to be identified.

Response: See response to *Comment 1*. Section 4.a. and 4.f will be changed to clarify the requirements for facility mapping and identifying high-risk area boundaries.

Comment 9: Permit Attachment D, page 4 iv: The Navy request that reporting of significant spill be changed from June 17, 1999 to the effective date of the adoption of the tentative Order.

Response: The tentative Order will be changed for the documenting of significant spills to the effective date of the tentative Order. The current General Industrial Permit includes the requirement to document significant spills. The tentative Order supersedes Order No. 97-03-DWQ, the General Industrial Storm Water Permit.

Monitoring and Reporting Program Comments

Comment 1: Page M-2, A.3: The Navy requests approval of monitoring forms currently used in the Annual Storm Water reports and in the RWD.

Response: The Navy can submit the currently used forms with the additional information required by the tentative Order. Upon review of the monitoring report the Regional Board will provide direction.

Comment 2: Page M-6, C.2: The requirement for sampling each industrial storm water discharge at the NAVSTA seems to conflict with the requirements in Storm Water Discharge Sampling Locations 8.d, page M-10, which allows representative areas be sampled.

Response: The requirements in Storm Water Discharge Sampling Location 8.d, page M-10, conditionally allows for a reduced number of sampling locations. If the conditions are met, then the Navy may monitor a reduced number of representative locations including a reduced number of representative locations at NAVSTA. The Navy must analyze copper and zinc for each of the industrial storm water discharges sampled at NAVSTA.

Comment 3: Refer to *comment #5* above from the Tentative Order Comments.

Response: See response to *comment #5* above from the Tentative Order Comments.

Comment 4: Page M-9, Section 6, Item f: The Navy requests that the requirement to visually observe all storm water drainage areas prior to anticipated storm events during daylight scheduled facility operating hours be removed from the Monitoring Program.

Response: Staff does not recommend changing this requirement. This requirement directs the Navy to identify and correct obvious pollutant sources prior to a storm event. The visual observation will provide opportune information regarding the condition of the facilities. The Navy should have responsible employees that could observe the storm water drainage areas at the various separate industrial facilities.

Comment 5: Page M-9: Samples of industrial storm water discharges are required of storm events when the discharge is preceded by at least 3-days without a storm water discharge. The shipyard Order requires sampling of a storm water discharge when the discharge is preceded by 7-days without a storm event. The Navy requests the monitoring be revised so that storm water discharges be collected after 7-days without a storm water discharge.

Response: A change from 7-days to 3-days is not recommended. The 3-day requirement is the current monitoring requirement in the General Industrial Storm Water permit. The tentative

Order requires the monitoring of the first two qualifying storm events and requires conditional monitoring when the copper or zinc concentrations indicate additional samples are necessary.

Comment 6: Page M-4, and M-5: The Navy requests that representative monitoring for Utility Vault & Manhole dewatering ; Steam Condensate: and Pier Boom, Mooring and Fender Cleaning be allowed.

Response: The Utility Vault & Manhole dewatering monitoring will be changed for a representative sample after the case study sampling has been conducted. The steam Condensate will be changed to a representative sample. The Pier Boom, Mooring and Fender System Cleaning does not require sampling.

Fact Sheet Comments

Comment 1: Table of Contents (TOC): The TOC is not numbered correctly.

Response: The page numbering for the TOC will be corrected.

Comment 2 & 3: Page 7, Section I.d.: The Navy Medical Center, San Diego (NMCSD) has submitted a Notice of Termination for its industrial storm water discharge which is regulated by the general Industrial Storm Water Permit. Accordingly, the NMCSD should not have its storm water discharges regulated as an industrial storm water discharge in the tentative Order. The NMCSD will be regulated by the Phase II municipal storm water permit.

Response: The tentative Order, Monitoring and Reporting Program, and Fact Sheet will be changed to remove the requirements for industrial storm water discharges and monitoring at NMCSD.

Comment 4: Page 7, Section I.d. Point Source Discharges; and Page 11 Section C second paragraph: Change CNSR to CNRSW.

Response: The acronym in the Fact Sheet will be changed.

Comment 5: Page 11 Section C second paragraph: Change *Sythe Energy* to *Sithe Energy*.

Response: The spelling in the Fact Sheet will be changed.

Comment 6: Page 16, Section II.d. Salt Water System: The discharge of salt water system at the Mole Pier has been shut down and does not exist any longer.

Response: The Fact Sheet and references in the tentative Order will be changed.

Comment 7: Page 21, Section III, e., 3rd paragraph: Change CNSR to CNRSW.

Response: The acronym in the Fact Sheet will be changed.

Comment 8: Page 22: The sandblasting and painting activities identified for Outfall 36 have been moved to Outfall 33 and 34.

Response: The outfall activities in the Fact Sheet will be changed.

Comment 9: Page 25, Section IV: The Navy requests a copy of the NPDES Permit Rating Worksheet and requests a more detailed narrative of the rationale used to classify NBSD as a *discretionary major* be included in the Fact Sheet.

Response: A copy of the NPDES Permit Rating Worksheet will be provided to the Navy. The detailed information for the *discretionary major* classification is the Fact Sheet, e.g., the size of the facility, the numerous discharge points, and the chemical concentrations in the industrial storm water discharges are items included in the Fact Sheet that support a *discretionary major* rating.

B. Environmental Health Coalition (EHC) letter dated October 30, 2002.

I. General Comments

I. A. Comment: Order fails to consider requirements of Total Maximum Daily Load and fails to set protection-based limits.

Response: A Total Maximum Daily Load (TMDL) has not been promulgated for the San Diego Bay. The tentative Order is not a TMDL planning document; it is an NPDES permit. An analysis of the waste load allocation (WLA), load allocation (LA), background loading (BL), and margin of safety (MOS) are not appropriate elements in the development and adoption of this NPDES permit.

I. B. Comment: Order fails to comply with the requirements of the California Toxics Rule. There is no justification or basis for using 63.6 µg/L for copper or 117 µg/L for zinc as concentration limits.

Response: On March 2, 2000, the State Board, in *Resolution No. 2000-15*, adopted a *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (Implementation Policy). The Policy implements the criteria for the 126 priority pollutants in the CTR. The State Board's Policy became effective on April 28, 2000, as applied to the *National Toxics Rule* and to the CTR. According to the Implementation Policy, p.1 footnote 1. . . . *This Policy does not apply to regulation of storm water discharges.* The Implementation Policy was not used for establishing effluent limits for the discharges of industrial storm water.

The USEPA has adopted a *general industrial storm water permit* for various industrial facilities under its jurisdiction. The USEPA permit, the *Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water, Multi-Sector General Permit for Industrial Activities, Federal Register, Monday, October 30, 2000*, (Multi-Sector Permit) can be used to evaluate the significance of the chemical concentrations in NBSD's storm water discharge to San Diego Bay.

The Multi-Sector Permit, *Sector R*, includes requirements for *Ship and Boat Building or Repair Yards*. According to the Multi-Sector Permit (p. 64766-69), when the industrial storm water discharge has concentrations greater than the *USEPA Benchmark Values* (p. 64767, Table 3), the industrial facility is required to increase monitoring frequencies. Additionally, the Multi-Sector Permit states that the facility operators should review and modify their storm water pollution prevention plans (SWPPP) and best management practices (BMP) at their facility to try to improve the quality of the storm water discharge when discharge concentrations are greater than the *USEPA Benchmark Values*. The USEPA Benchmark Value for copper concentrations is 63.6 µg/L. The USEPA Benchmark Value for zinc is 117 µg/L.

While the *USEPA Benchmark Values* are not an enforceable numeric limit, they are used to indicate concentrations of concern and to alert the regulated discharger to take actions to lower the concentrations in its discharge.

The tentative Order requires the Navy to evaluate its Storm Water Pollution Prevention Plan (SWPPP) for the industrial activity that has a discharge concentration greater than 63.6 µg/L for copper or 117 µg/L for zinc. The tentative Order also requires the Navy to sample and analyze the next 2 storms after modifying its SWPPP, and to document the modifications to the SWPPP.

I. C. Comment: Order fails to comply with State anti-degradation policies.

Response: The tentative Order does not allow an increase in pollutant loading. Compliance with the tentative Order should improve water quality. Therefore, an anti-degradation analyses is not required.

I. D. Comment: Navy permits should mirror or meet the same standard as comparable commercial shipyard facilities on the San Diego Bay.

Response: The Navy does not have the same discharges as the shipyard. For the NBSD, the point source discharges are: Utility Vault & Manhole Dewatering; Steam Condensate; Salt Water System; Pier Boom, Mooring and Fender System Cleaning; and Miscellaneous Discharges. The requirements in the tentative Order are equivalent to the commercial shipyard permits.

The Salt Water System is the *Fire Protection Water* at the shipyards and at the Navy Graving Dock. The Salt Water System operates when the Graving Dock is being used. Since the *Fire Protection Water* (that is, the Salt Water System Water provided by the NBSD) discharges at the Graving Dock are regulated by Order No. 98-53, it is not necessary to establish effluent limitations in the tentative Order. The Salt Water System discharge for the NBSD occurs at pressure relief valves and has not been used at the ship board systems at the Graving Dock. Therefore, additional discharge specifications are not necessary.

From the information contained in the report of waste discharge, discharge specification were not considered necessary for the Utility Vault & Manhole Dewatering; Pier Boom, Mooring, and Fender System Cleaning; and Miscellaneous discharges. Monitoring for chemical concentrations is required of the Utility Vault & Manhole Dewatering, and the Steam Condensate discharges. If the monitoring reports provide information that the discharges contain pollutants of concern the permit maybe be amended, if warranted, or additional specifications can be developed from the monitoring data when the permit is renewed in five years.

II. Specific Comments

II. A. & II. B. Comment: Order is ambiguous on what the Navy's discharge requirements are and what are the consequences of noncompliance. *Discharge Specification B.2.* appears to allow any level of copper discharges. Storm Water Runoff discharge limitations are not justified and will not be effective to protect beneficial uses. See *I. General Comments b.A.* above

Response: There is no numerical effluent limit for copper concentrations in the industrial storm water discharges. *Discharge Specification B.2.* is for the discharge of industrial storm water. The Navy must modify its SWPPP and resample the industrial storm water discharges when copper concentrations are greater than 63.6 µg/L or zinc concentrations are greater than 117 µg/L. *Discharge Specification B.4* has toxicity specifications for the industrial storm water discharges. Any non-compliance will be enforced according to the Regional Board's enforcement policy. The Implementation Policy and CTR are not used to regulate the discharges of storm water. See response to *I. General Comments b.A.* above.

II. C. Comment: Order allows for toxic discharges without penalty or correction.

Response: The tentative Order requires the Navy to comply with toxicity specification effective 4-years after the adoption of the Order. The iterative process to modify the BMP and SWPPP to reduce the pollutant concentrations in the industrial storm water discharges is consistent with State and Federal permits and policies. The iterative process to modify the BMP and SWPPP is

the corrective action. The monitoring program will allow an evaluation of this iterative process. Once sufficient characterization of the discharge is understood, the Regional Board may request addition BMP, effluent limitations, or other enforcement actions.

II. D. Comment: Order fails to require receiving water monitoring.

Response: Monitoring of the industrial storm water discharges will allow for a reasonable determination of the impacts to the receiving waters. If the concentrations in the discharges are known and are not a threat to water quality then the receiving waters are protected. The industrial storm water discharges will be studied and toxicity requirements are included in the tentative Order. See response to *I. General Comment b.A.* regarding TMDL.

II. E. Comment: Order should include progress reporting on diversion progress.

Response: The compliance date for termination of runoff from high-risk areas is consistent with the shipyard permits. The compliance date is two-years. Interim reporting is not considered a beneficial or useful reporting requirement. The Regional Board inspectors can review progress regarding the termination of runoff from the high-risk areas.

II. F. Comment: Fact Sheet and Permit Requirements should address oil spills from Navy Vessels.

Response: Oil spills are not regulated discharges. The Navy must report oil spills to the local Coast Guard, the Coast Guard's National Response Center (NRC), and the California Office of Emergency Services (OES). The OES subsequently informs the Regional Board regarding oil spills. Attachment D, page 4, of the tentative Order requires the Navy to document significant spills at its facility.

II. G. Comment: Order improperly basis de-facto limits on EPA benchmark copper limits for freshwater, not salt water, and toxicity testing should be required.

Response: Though the USEPA notes that the Benchmark Values are derived from freshwater criteria, the USEPA Benchmark Values were published and reviewed according to the Federal Code of Regulations. The tentative Order requires the Navy to comply with the USEPA Benchmark Values for copper. Toxicity specifications established in the tentative Order become effective and enforceable 4-years after the adoption of the tentative Order. During the interim period the Navy will conduct toxicity monitoring and a study to evaluate the toxicity of the industrial storm water discharges.

C. Briggs Law Corporation for its client, the Divers' Environmental Conservation Organization (DECO), letter dated October 30, 2002.

Comment 1: *Disparities in regulation of U.S. Navy and San Diego's Commercial Shipyards*

Paragraph 1. and 2. The tentative Order for the Navy does not contain specific prohibitions on discharges of refuse and like debris similar to the shipyard Order. (p.6, tentative Order No. R9-2002-0169, Prohibition A.1.)

Response: The tentative Order does not allow the discharge of waste unless specifically authorized. To clarify the prohibitions, the tentative Order will be changed to include a longer list of specific debris prohibitions.

Paragraph 3. The tentative Order allows the Navy four-years to comply with toxicity specifications for industrial storm water discharges. The commercial shipyards have to comply immediately. The Navy should also have to comply immediately. There has not been a Finding that the Navy needs four-years to achieve compliance. A reporting requirement must be included in the tentative Order when the compliance schedule for the toxicity is greater than one year.

Response: The tentative Order for the Navy is a new NPDES permit. The commercial shipyards had over two years to comply with the toxicity specification. During the public hearing for the Naval Base Point Loma NPDES permit, the validity and application of the toxicity specification for 90% survival 50% of the time was deliberated. The Regional Board allowed the Navy four-years to develop data for an alternative limit discharge specification for toxicity. An annual reporting requirement is required. The monitoring and reporting program requires annual reporting of toxicity or as developed according to a toxicity study plan that will be developed.

Paragraph 4: The commercial shipyard permits require them to keep the discharges "essentially free" from floatable and settleable objects, accumulative toxic substances, materials that cause aesthetically undesirable color in receiving waters, and substances that impair natural light in the benthic zone. (See tentative Order R9-2002-0161 B.9)

Response: The tentative Order does not allow the discharge of waste unless specifically authorized. To clarify the specifications, the tentative Order will be changed to include the specification cited.

Paragraph 5: The commercial shipyard permits have different receiving water limits.

Response: The tentative Order does not allow the discharge of wastes in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California

Water Code Section 13050. To clarify the receiving water limits, the tentative Order will be changed to include the additional limitations.

Paragraph 6 & 7: The receiving water limitations for industrial storm water discharges (p. 8, tentative Order R9-2002-0169, Receiving Water Limitations C.3.) does not impose CTR requirements and only requires a prescribed review-and-report regimen with regard to best management practices (BMPs) for reducing and preventing pollution.

Response: The State Board, in *Resolution No. 2000-15*, adopted a *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (Implementation Policy). The Policy implements the criteria for the 126 priority pollutants in the CTR. The State Board's Policy applies to the *National Toxics Rule* and to the CTR. According to the Implementation Policy, p.1 footnote 1. . . . *This Policy does not apply to regulation of storm water discharges.* The Implementation Policy was not used for establishing effluent limits for the discharges of industrial storm water.

Comment 2: *Conflict between California Toxic Rule and the U.S. Navy's Tentative Order*

Paragraph 1 & 2: The tentative Order only requires a series of tasks for the Navy if the copper and zinc concentrations are high. High concentration of copper and zinc would not be consistent with the CWA or California law. Such discharges would violate the anti-degradation policies and would exceed the CTR limits. The tentative Order should require remedies that are appropriate for such exceedences.

Response: An iterative process for the implementation of BMPs is consistent with State and Federal permits and policies. If the information received through the monitoring and reporting program indicates that the receiving water quality is impacted, the Regional Board can require submittal of additional data pursuant to 13267 of the Water Code, issue Cease and Desist Orders or issue a Cleanup and Abatement Order. As noted previously, the Implementation Policy is not used to regulate storm water discharges. The tentative Order reduces the pollutant loading to the receiving waters. The tentative Order, therefore, complies with the anti-degradation policy.

Comment 3: *Absence of Numeric Limitations for Copper, Zinc and Other Toxic Pollutants*

Paragraph 1: The tentative Order must contain effluent-based limitations for each priority pollutants identified in the CTR.

Response: The Navy will be submitting data to conduct a reasonable potential analysis of the point source discharges. The point source discharges include discharge from Utility Vault & Manhole Dewatering, Steam Condensate; Salt Water System; Pier Boom, Mooring and Fender System Cleaning; and Miscellaneous Discharges. Upon review of the priority pollutant monitoring data, the Regional Board may establish limits for priority pollutants. From the

information submitted thus far, each of the point source discharges do not appear to have a high potential for significant discharges of priority pollutants.

Comment 4: Limitations for Receiving Waters Require Revision

Paragraph 1: The Receiving Water Limitations C.2. (p. 8, tentative Order No. R9-2002-0169), prohibits discharges that “adversely *affect* human health and the environment.” The commercial shipyard permits use the term “adversely *impact* . . .” The operative regulatory terms should not be changed without a Finding or explanation.

Response: The word will not be changed. The *affect* language is from the State Board’s General Industrial Storm Water permit. A word change does not significantly change the limitation.

Paragraph 2: The *Receiving Water Limitations C.3.* (p. 8, tentative Order No. R9-2002-0169), contains the word *timely*. Exactly how much time does the Navy have in order to comply with the limitations on discharges to receiving water?

Response: According to *Receiving Water Limitations C.3.a.,c. & b.* (p. 8, tentative Order No. R9-2002-0169), the Navy has 30 days after determination of a discharge causing an exceedence of water quality standards (WQS) to submit a report that describes the BMPs that will be added to prevent or reduces any pollutants that are causing or contributing to the exceedence of WQS. If the Regional Board requires modifications to the report by the Navy, the Navy then has another 30-days to submit the modifications. The Navy must then implement the changes within another 30-days.

Comment 5: Lack of Monitoring Requirements

Paragraph 1: The tentative Order does not require monitoring of industrial storm water discharges.

Response: The industrial storm water monitoring requirements are found in the Monitoring and reporting Program pp. M-6 through M-12.

Comment 6: Form of Compliance Schedule

Paragraph 1: The Regional Board should seriously consider revising the tentative Order so that all final limitations appear *on its face* and then issue a separate compliance Order.

Response: As indicated in previous responses, some revisions will be made. The issuance of a separate compliance Order is not considered necessary.